

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KENNETH BROOKS,)
Plaintiff,)
)
V.) Case Number: 1:05-cv-11674 GAO
)
THE UNITED STATES OF AMERICA, and)
MARY JANE ESTRADA, N.P.)
Defendants.)

REQUEST FOR DEFAULT
PURSUANT TO FED. R. CIV. P. 55(a)

TO THE CLERK OF THE ABOVE NAMED COURT:

NOW COMES the plaintiff, through his attorney, William J. Thompson, and requests the court enter a Default against the defendant, Mary Jane Estrada, N.P., for failure to answer the complaint. The plaintiff states that the Complaint, naming the defendant, Mary Jane Estrada, N.P., was filed on August 11, 2005. To date, Mary Jane Estrada, N.P., has failed to file an Answer or other responsive pleading.

Early on in this case it was determined that Michael Folino, M.D. was a federal employee. The plaintiff, through his attorney, requested the United States government to discern whether the defendant, Mary Jane Estrada, N.P., was also a federal employee at the time of the alleged negligence. Eventually, the plaintiff learned the government did not employ the defendant, Mary Jane Estrada, N.P., and the plaintiff immediately proceeded with service. The federal Summons and a copy of the complaint was served on the Defendant, Mary Jane Estrada, N.P., on April 5, 2006, as appears from the Proof of Service of Process (attached as Exhibit A). The plaintiff received proof of good service from the sheriff, and filed the Return of Service with this court on May 5, 2006.

(See Exhibit A). After no answer was filed, the plaintiff attempted to notify the Defendant, Mary Jane Estrada, N.P., that she was required to file an Answer to this complaint. (See Exhibit B). There has been no response from the Defendant to date. The plaintiff further states that the time within which the Defendant, Mary Jane Estrada, N.P., shall serve a responsive pleading or otherwise defend pursuant to Fed. R. Civ. P. 12(a), has expired and the Defendant herein has failed to serve or file an Answer or otherwise defend as to the complaint.

WHEREFORE, the plaintiff makes application that the Defendant, Mary Jane Estrada, N.P., be defaulted for failure to answer plaintiff's Complaint.

Respectfully submitted,
The plaintiff,
By his attorney,

s/ William J. Thompson

WILLIAM J. THOMPSON
LUBIN & MEYER, P.C.
100 City hall Plaza
Boston, MA 02108
(617) 720-4447
BBO#: 559275

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• Also admitted in Rhode Island

www.lubinandmeyer.com

August 1, 2006

United States District Court for the
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: Kenneth Brooks

Vs. The United States of America and Mary Jane Estrada, N.P.

Case Number 1:05 cv 11674 GAO

Dear Sir or Madam:

Regarding the above-referenced matter, enclosed please find the following documents:

1. Request for Default Pursuant to Fed. R. Civ. P. 55(a); and
2. Affidavit of Attorney William J. Thompson in Support of Plaintiff's Request for Default.

May the same please be filed accordingly. Thank you.

Sincerely,

s/ William J. Thompson

William J. Thompson

WJT/km
Enclosures
[1783]

cc: Rayford A. Farquhar, Esquire

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KENNETH BROOKS,)
Plaintiff,)
)
V.) Case Number: 1:05-cv-11674
)
THE UNITED STATES OF AMERICA, and)
MARY JANE ESTRADA, N.P.)
Defendants.)

AFFIDAVIT OF ATTORNEY WILLIAM J. THOMPSON IN SUPPORT OF
PLAINTIFF'S REQUEST FOR DEFAULT

I, William J. Thompson, hereby depose and state as follows:

1. I am an attorney in good standing and I represent the plaintiff in this action.
2. On or about August 11, 2005, this action was filed against Mary Jane Estrada, N.P.
3. On or about April 7, 2006, the Return of Service was filed with the court for Mary Jane Estrada, N.P.
4. To date, the defendant has not filed an Answer or any responsive pleading.
5. To the best of my knowledge and belief, Mary Jane Estrada, N.P., is not on active duty with the military.

The above stated facts are true and accurate under the pains and penalties of perjury.

08-01-06

s/ William J. Thompson

Date

William J. Thompson

CERTIFICATE OF SERVICE

I, William J. Thompson, hereby certify that on the 1st day of August, 2006, I served the within document(s):

1. Request for Default Pursuant to Fed. R. Civ. P. 55(a); and
2. Affidavit of Attorney William J. Thompson in Support of Plaintiff's Request for Default

on all counsel of record by mailing a copy of same, first class mail, postage prepaid to the following:

Rayford A. Farquhar
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210

s/ William J. Thompson

William J. Thompson

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May 5, 2006

United States District Court for the
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: Kenneth Brooks
Vs. The United States of America and Mary Jane Estrada, N.P.
Case Number 1:05 cv 11674 GAO

Dear Sir or Madam:

Enclosed for filing and docketing in the above-referenced matter, please find an original summons with a proof of service as to defendant Mary Jane Estrada, N.P.

Thank you for your attention to this matter.

Sincerely,

s/ William J. Thompson

William J. Thompson

WJT/km
Enclosures
[1783]

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• Also admitted in Rhode Island

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June 6, 2006

Mary Jane Estrada, NP
15 Selkirk Road, Apt. 1
Brighton, MA 02135

Re: Kenneth Brooks
Vs. The United States of America and Mary Jane Estrada, N.P.
Case Number 1:05 cv 11674 GAO

Dear Ms. Estrada:

In April you were served with a Summons and a Complaint in the above-captioned case. The Summons has been filed with the United States District Court. Under the court rules, you must file an Answer or risk being defaulted.

I have reason to believe that you may be insured for this claim. I recommend that you put your insurer on notice of the lawsuit. If you cooperate with your insurer, they will likely provide a defense for you and you may benefit from the available insurance coverage. If you do not cooperate, your insurer may deny you the coverage to which you are presently entitled.

I urge you to forward the Summons and Complaint to your insurer immediately. Please let me know if you need another copy of the Summons and Complaint, or if I can be of any further assistance.

Very truly yours,

s/ William J. Thompson

William J. Thompson

WJT/km
[1783]



Suffolk County Sheriff's Department • 45 Bromfield Street • Boston, MA 02108-0617 (617) 961-6999
 I, Sheriff Edward J. Tobin, hereby certify and return that on 4/5/2006 at 10:30AM I served a true and
 correct copy of the Summons and Complaint in this action in the following
 manner: To wit, by leaving at the last and usual place of abode of Mary Jane
 Estrada, N.P., 15 Selkirk Road Apt 1 Brighton, MA 02135 and by mailing 1st
 class to the above address on 4/7/2006. Basic Service Fee (LU) (\$20.00), U.S.
 District Court Fee (\$5.00), Conveyance (\$2.40), Travel (\$5.12), Postage and
 Handling (\$3.00), Attest/Copies (\$10.00). Total charges \$45.52

Deputy Sheriff Edward J. Tobin

Deputy Sheriff

Address of Server

Signature of Server

Date

Executed on

I declare under penalty of perjury under the laws of the United States of America that the foregoing information
 contained in the Return of Service and Statement of Service is true and correct.

DECLARATION OF SERVER						
TRAVEL	SERVICES	TOTAL				
STATEMENT OF SERVICE FEES						
<input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Remained unexecuted: _____ <input type="checkbox"/> Name of person with whom the summons and complaint were left <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and <input type="checkbox"/> Service personally upon the third-party defendant. Place where served: <input type="checkbox"/> Discretion then residing therein. <input type="checkbox"/> Served personally upon the third-party defendant. Place where served: <input type="checkbox"/> Checked one box below to indicate appropriate method of service 						
<table border="1"> <tr> <td>NAME OF SERVER (PRINT)</td> <td>DATE</td> </tr> <tr> <td>Service of the Summons and complaint was made by me</td> <td></td> </tr> </table>			NAME OF SERVER (PRINT)	DATE	Service of the Summons and complaint was made by me	
NAME OF SERVER (PRINT)	DATE					
Service of the Summons and complaint was made by me						
RETURN OF SERVICE						